DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0136
Adjusted Gross Income Tax
For Tax Years 1995 through 1996

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ISSUE

I. Adjusted Gross Income Tax—Partnership Income

Authority: Allied-Signal, Inc., as Successor-in-Interest to the Bendix Corporation v. Director, Division of Taxation, 504 U.S. 768(U.S. 1992); 45 IAC 3.1-1-153; 45 IAC 15-3-2

Taxpayer protests the Department's classification of partnership income as non-unitary.

STATEMENT OF FACTS

Taxpayer is a 49.0% general partner in a partnership. Taxpayer has no other activities, employees or property other than its interest in the partnership. There is no activity between taxpayer and the partnership. Taxpayer receives its share of the partnership earnings only. In Indiana, the partnership contracts with a phone carrier and an office building that offers shared services. The partnership will then install and operate the phone system in that building. Further facts will be provided as necessary.

I. Adjusted Gross Income Tax—Partnership Income

DISCUSSION

Taxpayer protests the Department's modification of taxpayer's returns for the tax years in question. The Department determined that taxpayer was a non-unitary partner in a partnership, and eliminated apportionment factors and Indiana adjusted gross income and Indiana modifications were backed out as total non-business income and added back as Indiana non-business, non-unitary income. The Indiana modification represents Indiana's pro rata share of the add back of state income taxes plus real and property taxes. Taxpayer's share of the add back items was determined by taking its 49% multiplied against the total partnership add back items, after which the Indiana apportionment was applied arriving at the amount to be added back to the non-unitary income.

Taxpayer disagrees with the adjustment and states that the Department erred in its application of the relevant regulation. Taxpayer believes that 45 IAC 3.1-1-153(b) should have been applied and that the Department applied 45 IAC 3.1-1-153(c). These subsections of 45 IAC 3.1-1-153 provide:

> (b) If the corporate partner's activities and the partnership's activities constitute a unitary business under established standards, disregarding ownership requirements, the business income of the unitary business attributable to Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the corporate partner and its share of the partnership's factors for any partnership year ending within or with the corporate partner's income year, with the following modifications:
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> (1) The value of the property which is rented or leased by the corporate partner to the partnership or vice versa shall, with respect to the corporate partner, be excluded from the property factor of the partnership or eliminated to the extent of the corporate partner's interest in the partnership, whichever the case may be, in order to avoid duplication.
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> (2) Intercompany sales between the corporate partner and the partnership shall be eliminated from the corporate partner's sales factor as follows:
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> (A) Sales by the corporate partner to the partnership to the extent of the corporate partner's interest in the partnership.
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> (B) Sales by the partnership to the corporate partner not to exceed the corporate partner's interest in all partnership sales.
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> (c) If the corporate partner's activities and the partnership's activities do not constitute a unitary business under established standards, disregarding ownership requirements, the corporate partner's share of the partnership income attributable to Indiana shall be determined as follows:
>
> (1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the partnership.
>
> (2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to formula apportionment.

The decision of which of the two subsections to use rests on whether or not the partnership's activities constitute a unitary business under established standards. Taxpayer states that it is not aware of any Indiana case law that deals with unitary business standards when one company acts purely as a holding company for another. The United States Supreme Court explained the standard as, "In the course of our decision in *Container Corp*., we reaffirmed that the constitutional test focuses on functional integration, centralization of management, and economies of scale." Allied-Signal, Inc., as Successor-in-Interest to the Bendix Corporation v. Director, Division of Taxation, 504 U.S. 768, 783 (U.S. 1992)

Therefore, whether to use 45 IAC 3.1-1-153(b) or (c) depends on whether taxpayer and the company in whom it held stock had functional integration, centralization of management, and economies of scale, as provided in Allied-Signal. Taxpayer has not provided documentation establishing that there was functional integration, centralization of management, or economies of scale between it and its subsidiary.

Taxpayer referred to three Letters of Findings previously issued by the Department for other taxpayers in other tax years. Taxpayer alleges that these LOFs are directly on point with its situation. The Department refers to 45 IAC 15-3-2(d)(3), which states in relevant part:

> In respect to rulings issued by the department, based on a particular fact situation which may affect the tax liability of the taxpayer, only the taxpayer to whom the ruling was issued may rely on it.
> …
> Letters of findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested.

Therefore, as explained by 45 IAC 15-3-2(d)(3), only taxpayers to whom Letters of Findings are issued may rely on them. None of the LOFs referred to by taxpayer were issued to taxpayer, so taxpayer may not rely on them. Additionally, taxpayer has not established that its situation is similar to those situations described in the three LOFs.

In conclusion, taxpayer has not established that it maintained a unitary relationship with its subsidiary via functional integration, centralization of management or economies of scale, as described in Allied-Signal. Therefore, it is appropriate to use 45 IAC 3.1-1-153(c) to determine taxpayer's income attributable to Indiana. The Letters of Findings referred to provide no support for taxpayer.

FINDING

Taxpayer's protest is denied.

WL/JM/MR 022006